

REMARKS

This is responsive to an Office Action mailed on October 5, 2007. The Office Action rejected claims 1-6, 9, 10 and 13-59 and withdrew claims 7, 8, 11 and 12. Applicant has amended claims 1, 2, 22, 34, 43, 46, 51 and 55 and canceled claims 19-21, 30-33, 37-41, 45, 47-49, 54 and 56-58. The application currently includes claims 1-6, 9, 10, 13-18, 22-29, 34-36, 42-44, 46, 50-53, 55 and 59.

The Office Action rejected independent claims 1, 43 and 51 as being anticipated by the Frattinger et al. U.S. Patent No. 5,204,131 (hereinafter the Frattinger patent). The Office Action alleges that the Frattinger patent discloses a process for blending an egg based substance (liquid whole eggs; 8.85%) with a water absorbing thickener (e.g., flour which is comprised of particles) wherein a secondary ingredient including, for example, raisins may be mixed in. The Office Action alleges that due to the thick nature of the cookie dough, it is expected that the secondary ingredients would remain distributed until baking of the dough. The Office Action alleges that it is expected that the flour would possess the particular absorbing ability as set forth, for example, in claim 10 as such degree of absorbence is modest. The Office Action notes that the mixture further includes a stabilizing agent of starch by way of the flour or in the alternative of gelatin (as in Example 1), the use of gums which inherently provide freeze-thaw stability (e.g., 1.25% of the dough; col. 1, lines 43-52). The Office Action concludes that upon cooking of the dough, the egg component will coagulate.

Applicant respectfully disagrees that independent claims 1, 43 and 51 are anticipated by the Frattinger patent. Claims 1, 43 and 51 are directed to a method for making an egg-based product where an egg component is a major portion of the product. The method further includes cooking the egg component to form a coagulated mass (with other ingredients), cutting the coagulated mass into bite sized pieces, coating the pieces with a batter and frying the pieces in a heated fat. There is no disclosure in the Frattinger patent of such a method.

Rather, the Frattinger patent discloses a process for preparing cookies and cookies resulting from the process where the eggs are included in at about 8.85%. Cookies are not a similar food-stuff when compared to the egg-based product produced from the claimed methods.

Eggs are not the major portion of the cookies as claimed in claims 1, 43 and 51. Further there is no disclosure of cutting the cooked cookies into bite sized pieces as claimed or coating the bite sized pieces with batter and frying the coated bite sized pieces as claimed.

Therefore, the Fattinger patent does not disclose each and every element or suggest the method claimed in claims 1, 43 and/or 51.

For the foregoing reasons, the Frattinger patent does not anticipate any of the independent claims 1, 43 or 51. Reconsideration and allowance of independent claims 1, 43 and 51 are respectfully requested.

The Office Action also rejected dependent claims 2-4, 9, 10, 13, 14 17, 18 44-46, 51-55 and 59 as being anticipated by the Frattinger patent. Applicant has canceled claim 54. While Applicant does not acquiesce to the rejection of these dependent claims, Applicant submits that the anticipation rejections are moot in light of the fact that independent claims 1, 43 and 51 are in allowable form. Reconsideration and allowance of dependent claims 2-4, 9, 10, 13, 14 17, 18 44-46, 51-53, 55 and 59 are respectfully requested.

The Office Action rejected independent claims 22 and 43 as being anticipated by JP 63-216455 (JP '455). The Office Action alleges that JP '455 discloses a process for preparing a food wherein an egg solution is blended with a cooked water absorbent material (bread crumbs) wherein the same is heated and coagulated. The Office Action alleges that it is expected that the bread crumbs would possess a particular absorbing ability as set forth, for example, in claim 26 as such degree of absorbence is modest.

Applicant respectfully submits that independent claims 22 and 43 are not anticipated by JP '455. Elements of both claims 22 and 43 include cutting a coagulated egg mass into bite sized pieces, coating a batter onto the pieces and frying the pieces in a hot fat. Claim 22 also includes blending pieces of a supplemental food into the egg mixture which includes a cooked water absorbent material. Claim 43 includes blending additional water into the egg mixture which includes a thickening agent.

JP '455 does not disclose adding either additional water or pieces of supplemental food to the egg mixture which includes either a cooked water absorbent material or a thickening agent. JP '455 also does not disclose cutting the coagulated mass into bite sized pieces, coating the bite sized pieces with a batter or frying the bite size pieces in a heated fat. Therefore, JP '455 does not disclose each and every element or suggest the defined method in claims 22 or 43.

Because JP '455 does not disclose each and every element of either claim 22 or 43, claims 22 and 43 are not anticipated by JP '455. Reconsideration and allowance of claims 22 and 43 are respectfully requested.

The Office Action also rejected dependent claims 23-26, 28 and 43-45 as being anticipated by JP '455. Applicant has canceled claim 45. While Applicant does not acquiesce to the rejections of dependent claims 23-26, 28, 43 and 44, Applicant submits that the rejections are moot in light of the fact that independent claims 22 and 43 are in allowable form. Reconsideration and allowance of dependent claims 23-26, 28, 43 and 44 are respectfully requested.

The Office Action rejected independent claims 1, 22, 34, 43 and 51 as being anticipated by JP 2001-45959 (JP '959). The Office Action alleges that JP '959 discloses a process of preparing a food comprising whole eggs (inherently fluid and flowable) which are mixed with a water absorbent thickener (i.e., bread crumb; e.g., 20%), wheat flour (including starch which would inherently provide stabilizing), water (or, in the alternative, milk), and then pieces of supplemental food such as fruit, chocolates, raspberry puree which are also mixed homogeneously throughout the food wherein the mixed ingredients are then baked. The Office Action alleges that it is expected that the bread crumbs would possess the particular absorbing ability as set forth, for example, in claim 10 as such degree of absorbence is modest. The Office Action also alleges that the egg material will coagulate during baking and it is expected that due to the present of the starch therein that said product would exhibit some freeze/thaw stability.

Applicant respectfully submits that independent claims 1, 22, 34, 43 and 51 are not anticipated by JP '959. Elements of both claims 1, 22, 34, 43 and 51 include cutting a coagulated egg mass into bite sized pieces, coating a batter onto the pieces and frying the pieces in a hot fat. There is no such disclosure in JP '959 of such a method.

Rather, JP '959 discloses a cream puff dough. A cream puff does not have a similar appearance, taste or texture to the product produced by the methods claimed. Further, a cream puff is not cut into bite sized pieces, battered and fried in a heated fat as claimed. Therefore, JP'959 does not disclose or suggest each and every element of claims 1, 22, 34, 43 and 51.

For the foregoing reasons, Applicant respectfully submits that independent claims 1, 22, 34, 43 and 51 are not anticipated or suggested by JP '959. Reconsideration and allowance of independent claims 1, 22, 34, 43 and 51 are respectfully requested.

The Office action also rejected dependent claims 2-6, 9, 10, 13, 15-18, 23-26, 28, 29, 33, 34, 36-38, 42, 44-46, 50, 52-55 and 59 as being anticipated by JP '959. Applicant has

canceled claim 33, 37, 38, 45 and 54. While Applicant does not acquiesce to the rejections of these dependent claims, Applicant submits that by virtue of their dependency on allowable independent claims 1, 22, 34, 43 and 51, that the dependent claims are also in allowable form. Reconsideration and allowance of claims 2-6, 9, 10, 13, 15-18, 23-26, 28, 29, 34, 36, 42, 44, 46, 50, 52, 53, 55 and 59 are respectfully requested.

The Office Action also rejected independent claims 1, 22, 33 and 51 as being anticipated by JP 402069166 (JP '166). The Office Action alleges that JP '166 discloses a process for preparing a food wherein eggs (inherently fluid and flowable) and bread crumbs (water-absorbent thickener) are combined and then blended with vegetables, meat, fish and shellfish and subsequently baked. The fluid is alleged to also include starch, a stabilizing agent, via the wheat flour also present during baking. The Office Action states that it is expected that the bread crumbs would possess the particular absorbing ability as set forth, for example, in claim 10 as such degree of absorbence is modest. The Office Action states that the egg material will coagulate during baking and it is expected that due to the presence of the starch therein that said product would exhibit some freeze/thaw stability.

Applicant respectfully disagrees that any of the independent claims 1, 22, 33 and 51 are anticipated by JP '166. Elements of each of the independent claims includes a method of preparing an egg-based substance that comprises an egg mixture being a major component of the egg-based substance. Each of the independent claims also comprises cutting the egg mixture into bite sized pieces after forming a coagulated mass, coating a batter onto the bite sized pieces and frying the bite sized pieces in a hot fat. There is no disclosure of such a method in JP '166.

Rather, JP '166 discloses a thin, flat cake made with unsweetened batter that is fried with bits of vegetables. A thin flat cake is not an egg-based product made by the method defined in the claims. A cake does not have the same or similar appearance, taste or texture when compared with the egg-based food produced by the claimed method. Further, there is no disclosure of cutting the thin, flat cake disclosed in JP '166 after cooking, coating a batter onto the pieces or frying the pieces in a hot fat.

For the foregoing reasons, JP '166 does not disclose or suggest each and every element of independent claims 1, 22, 43 and 51. As such, independent claims 1, 22, 43 and 51 are in allowable form. Reconsideration and allowance of independent claims 1, 22, 43 and 51 are respectfully requested.

The Office Action also rejected dependent claims 2-6, 9, 10, 13, 17, 18, 23-26, 28, 29, 44-46, 50, 53-55 and 59 as being anticipated by JP '166. Applicant has canceled claims 45 and 54. While Applicant does not acquiesce to the rejections of these dependent claims, Applicant submits that by virtue of their dependency on independent claims 1, 22, 43 and 51, which are in allowable form, that dependent claims 2-6, 9, 10, 13, 17, 18, 23-26, 28, 29, 44, 46, 50, 53, 55 and 59 are also in allowable form. Reconsideration and allowance of dependent claims 2-6, 9, 10, 13, 17, 18, 23-26, 28, 29, 44, 46, 50, 53, 55 and 59 are respectfully requested.

The Office Action also rejected independent claims 1, 22, 34, 43 and 51 as being anticipated by Pfeiffer U.S. Patent Application Publication No. 2003/0044510 (Pfeiffer application). The Office Action alleges that the Pfeiffer application discloses a process for preparing a food wherein beaten eggs (inherently fluid and flowable), comminuted bread (i.e., water-absorbent thickener and employed in less than 25% of the total weight, see paragraph 25), pieces of a supplemental food (bacon, pork, etc.) which are mixed together and formed into a patty wherein it is expected that the comminuted bread would aid in binding and maintaining the distribution of pieces of the supplemental food through the food. The Office Action alleges that it is expected that the bread ingredient would possess the particular absorbing ability as set forth, for example, in claim 10 as such degree of absorbence is modest. The Office Action alleges that upon cooking of the food, the egg component will coagulate and that the Pfeiffer application discloses breading the food product and frying the same (e.g., paragraph 12).

Applicant respectfully disagrees that independent claims 1, 22, 43 and 51 are anticipated by the Pfeiffer application. Elements of each of the independent claims include blending an egg mixture where an egg component is the major portion. Each of the independent claims also comprises cutting the egg mixture into bite sized pieces after forming a coagulated mass, coating a batter onto the bite sized pieces and frying the bite sized pieces in a hot fat. There is no disclosure of such a method in JP '166.

Rather, the Pfeiffer application discloses a meat patty that includes three eggs per 950 grams of other material in paragraph 25 of the Pfeiffer application. Three eggs in 950 grams of material is not a major portion as claimed. Rather, the eggs make up a small fraction of the meat patty. Also, a meat patty does not have the same appearance, taste or texture when compared to the egg-based product produced by the claimed methods.

Further there is no disclosure in the Pfeiffer application of cutting the patty into bite sized pieces once cooked, coating a batter on the piece and frying the pieces in a hot fat as claimed. Therefore, the Pfeiffer application does not disclose each and every element of independent claims 1, 22, 43 and 51.

As such, the Pfeiffer application does not anticipate claims 1, 22, 43 and 51. Reconsideration and allowance of independent claims 1, 22, 43 and 51 are respectfully requested.

The Office Action also rejected dependent claims 3-6, 9, 10, 17, 19, 20, 23-26, 28, 30, 31, 33, 44, 45, 47, 48, 50, 53, 54, 56, 57 and 59 as being anticipated by the Pfeiffer application. Applicant has canceled claims 19, 20, 30, 31, 33, 45, 47, 48, 54, 56 and 57. While Applicant does not acquiesce to the rejections of dependent claims 3-6, 9, 10, 17, 23-26, 28, 44, 50, 53 and 59, Applicant submits that by virtue of their dependence upon allowable independent claims 1, 22, 43 and 51, that dependent claims 2-6, 9, 10, 17, 23-26, 28, 44, 50, 53 and 59 are in allowable form. Reconsideration and allowance of dependent claims 2-6, 9, 10, 17, 23-26, 28, 44, 50, 53 and 59 are respectfully requested.

The Office Action also rejected dependent claims 14 and 27 as being obvious over JP '166 as applied in paragraph 6 of the Office Action or JP '959 as applied in paragraph 5 of the Office Action. While Applicant does not acquiesce to the rejections, Applicant submits that the rejections are moot in light of the fact that claims 14 and 27 depend from allowable claims 1 and 22, respectively. Reconsideration and allowance of dependent claims 14 and 27 are respectfully requested.

The Office Action also rejected dependent claims 15, 16, 34, 35, 36, 37, 39, 40 and 42 as being obvious over the Pfeiffer application as applied in paragraph 7 of the Office Action as taken together with the AllRecipe document. Applicant has canceled claims 37, 39 and 40. While Applicant does not acquiesce to the obviousness rejections dependent claims 15, 16, 34, 35, 36 and 42, Applicant submits that the rejections of claims 15, 16, 34, 35, 36 and 42 are moot in light of the fact that independent claims 1 and 34 are in allowable form. Reconsideration and allowance of claims 15, 16, 34, 35, 36 and 42 are respectfully requested.

The Office Action also rejected dependent claims 13, 14, 18, 21, 27, 29, 33, 38, 41, 46, 49, 52, 55 and 58 under 35 USC § 103(a) over the combination of the Pfeiffer application and/or the AllRecipe document in view of U.S. Patent Application Publication 2005/0186321

("Ullrich application"). The Office Action cites the Ullrich patent as teaching eggs containing patties having freeze-thaw stability due to the presence of, for example, xanthan gum (paragraph 17). The Office Action states that it would have been obvious to one having ordinary skill in the art at the time of the invention to have included such stabilizing agent in the product of the Pfeiffer application to impart a freeze-thaw stability for the same.

Applicant has canceled claims 33, 49 and 58. While Applicant does not acquiesce to the rejections of claims 13, 14, 18, 21, 27, 29, 38, 41, 46, 52 and 55, Applicant submits that the rejections are moot in light of the fact that independent claims 1, 22, 34, 43 and 51 are in allowable form. Reconsideration and allowance of dependent claims 13, 14, 18, 21, 27, 29, 38, 41, 46, 52 and 55 are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By: 

Z. Peter Sawicki, Reg. No. 30,214
900 Second Avenue South, Suite 1400
Minneapolis, Minnesota 55402-3319
Phone: (612) 334-3222 Fax: (612) 334-3312

ZPS:PJI:mek